

Agreement No. \_\_\_\_\_

**FIBER-OPTIC COMMUNICATIONS INTERCONNECTION  
INTERLOCAL COOPERATION AGREEMENT**

This is an Interlocal Cooperation Agreement ("**Agreement**"), made and entered into by and between the **Utah Department of Transportation**, hereinafter designated as "**UDOT**," a public agency of the State of Utah, and **Tooele County**, hereinafter designated as "**County**," (each a "**Party**" and together the "**Parties**") with reference to the following facts and recitals:

**WITNESSETH**

**WHEREAS**, UDOT owns and operates a fiber-optic cable system (including, without limitation, fiber - optic cables and related distribution centers, connections, equipment, power supply and facilities, (collectively, "**UDOT's System**") which provides high-speed, broadband network connectivity (collectively, "**Communication Services**") in certain streets and highways under UDOT's control and jurisdiction ("**UDOT Highways**"); and

**WHEREAS**, the County wishes to use some of UDOT's System for its telecommunications purposes; and

**WHEREAS**, the County intends to lay fiber-optic cable and create a fiber-optic cable system (including, without limitation, fiber-optic cables and related distribution centers, connections, equipment, power supply and facilities ("**Facilities**"), collectively, ("**County's System**") within non-private arterial and collector streets in the County's unincorporated boundaries which it owns or over which it has exclusive control and jurisdiction ("**County Streets**") for **Communication Services**, which it wishes to connect to UDOT's fiber-optic cables; and

**WHEREAS**, UDOT wishes to connect to and have the use of the County's System in order to monitor and control traffic control devices on the streets and highways under its jurisdiction for its Automated Traffic Management System (ATMS) and for its other telecommunications purposes; and

**WHEREAS**, pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated (1953) as amended, public agencies, including political subdivisions of the State of Utah as defined therein, are authorized to enter into mutually advantageous agreements for joint or cooperative action; and

**WHEREAS**, UDOT and the County, through their respective governing bodies, have voluntarily determined that the interest and welfare of the public will best be served by this Interlocal Cooperation Agreement to provide for joint use of their resources in the use of County and UDOT facilities and property for control of traffic control and telecommunications equipment of the parties,

NOW, THEREFORE, be it mutually covenanted and agreed as follows, each of the Parties accepting as consideration for this Agreement the mutual promises and agreements of the other:

**1. GRANT OF RIGHTS TO ENTER AND CONNECT TO SYSTEMS**

The Parties hereby grant the following licenses to each other.

- A. UDOT's Grant of License to County; Purpose and Use.** UDOT hereby grants to the County a non-exclusive revocable license to enter its streets, highways and real property to connect the County's Facilities to UDOT's System, and to install, operate, inspect, maintain, repair, upgrade, replace and remove such Facilities within UDOT streets, highways and real property for the purpose of making available Communications Services via UDOT's and the County's Systems, all at the County's sole cost and expense, and all subject to all the conditions, terms and covenants set

forth in this Agreement, including compliance with the applicable portions of R930-6 Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way, R930-7 Utility Accommodation, and R907-64 Longitudinal and Wireless Access to Interstate System Rights-of-Way for Installation of Telecommunication Facilities.

- B. County's Grant of License to UDOT.** The County hereby grants to UDOT a non-exclusive revocable license to enter and connect UDOT's fiber-optic and telecommunications cables and Facilities to the County's System, and to install, operate, inspect, maintain, repair, upgrade, replace and remove such cables and facilities within County Streets and real property for the purpose of making available Communications Services via the County's and UDOT's Systems, all at UDOT's sole cost and expense, and all subject to all the conditions, terms and covenants set forth in this Agreement, and the County's applicable ordinances, rules and regulations, including the County's Standard Specifications for Work in the Public Right-of-Way, as it may be changed from time to time, or any replacement rules.
- C. Inspection.** Each Party shall be entitled to inspect any work done under this Agreement in its streets, highways or on other property it owns. Each Party doing work in the streets and highways of the other shall give to the Party which controls the street or highway in which the work is done, a detailed and accurate report on work in the street or highway of the other Party upon request.
- D. Relocation.** Upon 90 days prior written notice to the other Party, each Party may relocate all or part of its own and the other Party's fiber-optic system within its streets, highways, or real property, at the expense of the Party which owns the fiber-optic facilities unless the Parties' Representatives agree otherwise in writing.

## 2. DESCRIPTION OF ACTIONS

### A. Conduit and Fiber and Equipment:

- (1) The County shall install fiber-optic cables and Facilities which it wishes to connect to the UDOT System. UDOT shall allow such connections to fiber-optic cable splice points subject to the other provisions herein.
- (2) All fiber-optic cables, splice points, and other facilities shall be and remain the property of the Party which caused them to be installed, whether in its own streets and highways, or in those of the other Party, unless otherwise agreed in writing by the Parties' Representatives.
- (3) All such connections shall be made at the sole cost and expense of the Party seeking the connection unless otherwise agreed between the parties by addendum or letter signed by the Parties' Representatives.
- (4) Upon termination of this Agreement, all fiber-optic cables and telecommunications facilities installed in any streets, highways, or real property of the other Party under this Agreement may, at the discretion of the Party owning the facilities be forthwith disconnected and removed from the streets, highways, or real property of the other in which it is placed, and retained by that Party, which shall be reasonably allowed by the Party owning or having jurisdiction over the streets, highways or real property. Any fiber-optic cables and Facilities not so removed within 60 days after the termination of this Agreement may become the property of the Party that owns the street or highway at its sole discretion.
- (5) Each Party shall perform all installation, maintenance, repair and removal work of its Facilities at its own expense or with funds allocated for such purpose, and with its own crews or contractors except as otherwise agreed in writing by the Parties' Representatives. All Facility

installation, repair, maintenance and replacement work under this Agreement shall be performed according to UDOT specifications. All road construction work within UDOT's streets and highways or on UDOT real property shall be performed according to UDOT specifications, where applicable. All road construction work within County streets and highways or on County real property shall be performed according to County specifications.

(6) Neither Party shall perform any construction work in the streets or highways of the other without complying with any applicable road-cut permit requirements for such work. Where any work is performed on real property owned by a party which is not a road or highway, the party which owns the property may require the contractor, party or entity performing the work to post payment and performance bonds in its discretion.

(7) Either Party may contract or subcontract any work it performs hereunder to any person or entity competent and legally allowed to perform such work, provided that no such contract shall relieve the Party of any of its obligations under this Agreement.

**B. Maintenance:**

(1) Each Party shall be responsible for the costs of maintenance of its own fiber-optic cables, Facilities and system.

(2) Both the County and UDOT agree to not perform any construction, reconstruction, splicing, or other work on the other Party's fiber-optic cables, Facilities or fiber-optic system without the permission of the other Party.

(3) Each Party agrees to hold the other Party harmless from any disruptions in service that it may suffer due to loss of telecommunications service, hardware and/or software, and each Party shall be fully responsible for implementing its own alternative or backup service or course of action should such an event occur.

**C. Compensation:**

General Services: Both County and UDOT agree that no monetary compensation will be paid by either Party to the other in exchange for the promises, covenants or work under this Agreement unless otherwise specifically agreed to by the Parties' Representatives in writing.

**3. EFFECTIVE DATE, DURATION, TERMINATION**

**A. Effective Date, Duration:**

This Interlocal Cooperation Agreement shall be effective on the date it is signed by the Parties, and shall continue for a period of thirty (30) years, unless sooner terminated as provided herein. After the initial thirty(30)-year term, this Agreement shall renew automatically on its anniversary date for up to four successive five(5)-year periods for twenty(20) additional years, unless terminated in writing by either Party sixty (60) days prior to any such anniversary renewal date. If neither party notifies the other of an automatic renewal date as provided herein at least 60 days before the date, then either party may terminate this Agreement during that renewal term for any reason by notifying the other of its intent to do so. The termination shall become effective 90 days after delivery of the notice to the other.

**B. Termination:**

This Interlocal Cooperation Agreement may be terminated only according to Paragraph 3(A), by mutual agreement, or either Party may terminate as provided in Section 8.

**4. ADMINISTRATIVE ENTITY**

County and UDOT do not contemplate nor intend to establish a separate legal entity under the terms of this Interlocal Cooperation Agreement.

**5. MANNER OF FINANCING**

This Interlocal Cooperation Agreement and the action completed herein shall not receive separate financing, nor shall a separate budget be required. Each Party shall be responsible for its own obligations under this Agreement.

**6. ADMINISTRATOR**

No separate legal entity is created by this Agreement. Pursuant to Section 11-13-207, Utah Code Annotated (1953), as amended, to the extent any administration of this Agreement becomes necessary, the Parties agree that the County Engineer and UDOT's Fiber-Optics Manager or their designees shall constitute a joint board for such purpose. This Agreement does not anticipate or provide for any organizational changes in the County or UDOT.

**7. FILING OF INTERLOCAL COOPERATION AGREEMENT**

A copy of this Interlocal Cooperation Agreement shall be placed on file at the offices of the County and UDOT, and shall remain on file for public inspection during the term of this Agreement.

**8. NOTICE OF DEFAULT—CORRECTIVE ACTION**

The failure of either Party to comply with any term or condition of this Agreement shall constitute a breach of this Agreement. Either Party shall have thirty (30) days after receipt of written notice from the other of any breach to cure the conditions specified in the notice, or if the corrections cannot be made within the 30-day period, within a reasonable time if corrective action is commenced within ten (10) days after the receipt of the notice.

**9. REASONABLE WEAR AND USE**

This Agreement is for use and does not represent a sale or transfer of any part of the fiber-optic systems of either Party identified herein. Therefore, each Party shall at the termination of the Agreement allow the other Party reasonable opportunity to remove all items and property identified herein as having been provided by or being owned by said other Party, subject to the other terms herein, including compliance with any lawful rules and regulations of the Party having jurisdiction of the road or property where the work is performed.

**10. PARTIAL DESTRUCTION**

Partial or complete destruction of any of the fiber-optic systems of either Party or the streets or properties referred to herein shall not render this Agreement void or voidable, nor terminate it except as herein provided.

**11. RIGHT TO ENTER**

Each Party reserves the right to enter the streets, highways and real property of the other Party at reasonable times to inspect, maintain, repair, operate, replace and remove its fiber-optic cables, system, and Facilities subject to the statutes, regulations of the Party with jurisdiction over the streets, highways and real property entered, after obtaining permits and submitting plans and specifications as required.

**12. GOVERNING LAW**

All questions with respect to the construction of this Interlocal Cooperation Agreement and all rights and liabilities of the Parties hereto shall be governed by the laws of the State of Utah.

**13. REPRESENTATIVES, LIMITATIONS ON PAYMENTS, NOTICE**

The Parties' Representatives shall be the persons listed below, or such other person designated to the other in writing by a supervisor of the Party's Representative. Notwithstanding other provisions herein, the Parties Representatives may not agree to pay or make payments one to the other hereunder for any single item or group of related items in excess of \$10,000 without the written agreement of the Director of UDOT and the County Commissioners. Notwithstanding the foregoing, nothing herein shall be construed to allow the Parties or either of them to circumvent applicable purchasing statutes. For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or mailed, or sent by facsimile transmission, certified mail, postage pre-paid, to the parties at the following addresses:

**UDOT:** Fiber-Optics Manager  
2060 South 2760 West  
Salt Lake County, Utah 84104

**Tooele County:** Derek Bracken,  
47 South Main Street  
Tooele, Utah 84074

or when given to such other person as either of the above representatives or their supervisors shall designate in writing to the other Party. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

**14. INDEMNIFICATION**

Each Party agrees to indemnify and save harmless the other for damages, claims, suits and actions arising out of its own actions or omissions or the acts or omissions of its officers, agents, or employees in connection with this Agreement. It is expressly agreed between the Parties that the obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, Utah Code Ann. Section 63-30d-604, whether or not that Act applies. This provision is not a waiver of the Governmental Immunity Act by either Party.

**15. GENERAL PROVISIONS**

- A. Severability.** In the event that any condition, covenant, or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- B. Entire Agreement, Waiver.** This Agreement contains the entire agreement between the Parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the Parties to it. No waiver of any of the rights granted under this Agreement will be effective unless expressly made in writing.
- C. Amendments.** This Agreement may be modified only by a writing signed by the parties in interest at the time of the modification.

- D. **No Assignment.** This Agreement shall not be pledged or assigned without the prior written consent of the other Party.
- E. **Binding Effect.** This Agreement shall bind the Parties, their successors, and assigns.
- F. **Captions.** The captions to the various Sections of this Agreement are for convenience and ease of reference only and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any parts of this Agreement.
- G. **Time.** Time is of the essence of each term, provision, and covenant of this Agreement.
- H. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- I. **Third-Party Rights.** Nothing herein is intended to confer rights of any kind upon any third party.

**IN WITNESS WHEREOF**, the Parties have signed and executed this Interlocal Cooperation Agreement, after resolution duly and lawfully passed, on the dates listed below:

DATED this \_\_\_ day of October, 2018

UTAH DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
 Ahmad Jaber, PE  
 UDOT Director of Operations

Approved as to Form and Compatibility  
 With the laws of the State of Utah

By: \_\_\_\_\_  
 David R. Benard  
 Assistant Attorney General  
 DATED this \_\_\_ day of October, 2018

TOOELE COUNTY

ATTEST:

By: Wade B. Bitner  
 Commissioner Wade Bitner

Marilyn K. Sillette  
 County Recorder Clerk & Auditor

Approved as to Form and Conformity  
 With the Laws of the State of Utah

By: [Signature]  
 Tooele County Attorney

